

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

**8:16CR27**

vs.

MICHAEL NUNEZ,

Defendant.

**ORDER**

This matter is before the Court on the request of the defendant seeking compassionate release. [Filing No. 81](#). The Defendant seeks a reduction of sentence pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) as amended by Section 603 of the First Step Act, [Pub. L. No. 115-391](#), 132 Stat. 5194 (2018). In Section 603 of the First Step Act, Congress amended [18 U.S.C. § 3582\(c\)\(1\)\(A\)](#) to permit defendants to move a sentencing court for compassionate release “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Under the law, it matters not that the COVID-19 pandemic creates a great health risk to many prisoners. Administrative exhaustion under the Act is a jurisdictional prerequisite to this Court making a decision as to compassionate relief. In Defendant’s motion, [Filing No. 81](#), Exhibits 1-4B, he demonstrates that he has exhausted all administrative remedies through the Bureau of Prisons as his requests dated May 27, 2020, June 11, 2020, July 13, 2020 and an additional requested dated July 2020, have been denied.

Further, the Defendant has outlined a possible release plan. The Court will appoint the Federal Public Defender's Office to oversee this case. Likewise, the Court will order the United States Probation office to review a home detention placement as outlined in the defendant's motion and will order the government to file its response.

**THEREFORE, IT IS ORDERED THAT:**

1. The Public Defender's office, Dave Stickman, is appointed to represent the defendant and is ordered to file a brief within 30 days;
2. The United States Attorney's office, Joseph Kelly, is ordered to review the defendant's motion. The government shall have 30 days hereafter to file a responsive brief; and
3. The United States Probation Office, Doug Steensma, is ordered to review the defendant's motion, gather BOP records, investigate the Defendant's proposed release plan, and submit a final investigative report within 30 days.

Dated this 18th day of September, 2020.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge